

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

**In the Matter of the Liquidation of
The Home Insurance Company**

Before the Court is the Liquidator's Motion for Approval of Agreement and Compromise with the AFIA Cedents. The Ace Companies and Benjamin Moore & Co., interveners in this action, object to approval of this agreement. The Court has reviewed the pleadings and submissions of the parties and held a hearing on the motion on April 23, 2004.

The issue raised by this motion is whether the proposed agreement is consonant with RSA Chapter 402-C, and consistent with the powers of the Liquidator as contemplated by that statute. The Liquidator characterizes the agreement as marshalling assets as authorized by RSA 402-C:1, III and IV; and RSA 402-C: 25, V and XXII. The Ace Companies and Benjamin Moore argue that the agreement is in effect a distribution of assets in violation of the statutory distribution scheme of RSA 402-C:44. It appears that the concept formulated in the pending agreement is one of first impression.

By way of brief background, the agreement involves non-novated AFIA treaty exposures which are reinsured or indemnified by the Ace Companies. These Ace Companies' liabilities are substantial assets, estimated at \$231 million, of the Home Insurance Company Liquidation. They are collectible by the Liquidator only if and when the AFIA Cedents file and prosecute claims with the Liquidator. Because the AFIA Cedents' claims are in Class V under the statute, however, they will not be reached and

paid. Thus, it is uncertain at best whether the AFIA Cedents will file their claims since they have no apparent reason to expend the resources necessary to do so except to the extent that they may have setoff opportunities. If the AFIA Cedents fail to file their claims, the Liquidator will not be able to access the substantial assets of the Ace Companies. With the purposes of addressing the uncertainty as to whether AFIA Cedents will file and prosecute their claims to trigger access to Ace Companies' assets, and of providing an incentive to do so, the Liquidator has endorsed the pending agreement between the provisional liquidators in the United Kingdom and the Informal Creditors' Committee. Neither the Financial Services Authority (FSA) nor the National Conference of Insurance Guaranty Funds Reinsurance Commutation Subcommittee on the Home Insurance Company in Liquidation has objected to the proposed agreement and compromise. Pursuant to the agreement, the AFIA Cedents will receive approximately \$72.5 of the estimated \$231 million the Liquidator will receive from the Ace Companies when the AFIA Cedents' Claims are filed and prosecuted.

After reviewing the pleadings and statute, and considering the oral arguments of the parties, the Court is persuaded that, under the circumstances of this liquidation as explained below, the agreement proposed by the Liquidator is authorized under the broad array of powers granted the Liquidator under RSA 402-C:25 and is consistent with the goals and purposes of the statute to protect the interests of the insureds and creditors. RSA 405-C:1, IV. As a result of the agreement, the Liquidator will be able to marshal substantial assets to be distributed to creditors which would otherwise be unavailable. Also, although under the agreement AFIA Cedents will receive payments which, as Class V claimants, they would not otherwise receive, these payments are not to the detriment of

other Class V claimants who will receive nothing with or without the agreement.

Moreover, the agreement benefits Class II claimants, including Benjamin Moore, because the amount to be distributed to members of this class will increase. Finally, while the agreement assures that the Ace Companies will not receive a windfall of \$213 million, it imposes no additional liability upon them than those they have already assumed. For the above reasons, the Liquidator's Motion for Approval of Agreement and Compromise with AFIA Cedents is **GRANTED**.

While this matter has been decided favorably to the Liquidator, the Court is nevertheless concerned that the Ace Companies were not included in discussions whereby the proposed agreement was reached and that protracted litigation over this issue will ensue. Accordingly, the Court urges the parties to reach a global agreement on this issue. The Court schedules a further hearing on Friday, June 4, 2004 at 9 a.m. to discuss where the parties are at that time regarding any resolution of this matter.

So Ordered.

DATED: April 29, 2004

/ s /

Kathleen A. McGuire
Associate Justice